

Review Draft CPUC Enforcement Principles

Background

The Compliance and Enforcement Initiative¹ is working towards a policy that provides guidance for the CPUC's compliance and enforcement activities. Enforcement Principles will inform that policy. The draft Enforcement Principles were developed by reviewing policies from several other agencies, through feedback from Commission staff, most notably the Administrative Law Division, Safety and Enforcement Division, Consumer Protection and Enforcement Division, and Energy Division, and with expert guidance from Denise Hoffman, a retired annuitant.

Next Steps

Finalize Enforcement Principles based on today's discussion. I anticipate returning with a draft compliance and enforcement policy at a Committee meeting in the fall with a goal of having the policy adopted by the end of the year.

Draft Enforcement Principles

Introduction

Enforcement and compliance help ensure that utilities provide services and facilities to the public in a manner that is safe, reliable, non-discriminatory and fiscally reasonable. The Commission is engaged in an initiative to adopt a policy that will be used by all divisions to guide their enforcement actions. The policy will promote a Commission-wide uniform approach to enforcement among the divisions. In developing the policy, the Commission will consider its existing enforcement policies and practices and use the following guiding principles.

A. Ensuring Compliance

The Commission will strive to ensure compliance with statutes, rules, orders and other requirements and provide a meaningful deterrent to violations through its enforcement actions.

B. Consistent Enforcement

Commission enforcement actions shall be consistent, while considering the differences in the Commission's statutory authority and programs for each particular industry. The Commission's enforcement actions shall be appropriate for each type of violation and shall provide consistent treatment for violations that are similar in nature and have similar safety and/or customer protection impacts. Enforcement actions shall also require a timely return to compliance.

¹ The Compliance and Enforcement Initiative is led by President Picker and Commissioner Rechtschaffen. Staff introduced the Compliance and Enforcement Initiative during the November 28, 2018 Finance and Administration committee meeting. Presentation here: https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Transparency/Commissioner_Committee_Meetings/finadmin/2018/SD-07%20Compliance%20and%20Enforcement%20Initiative%20Final%202018-11-27.pdf

C. Firm Enforcement & Meaningful Deterrence

Enforcement actions should provide a meaningful deterrent to non-compliance. This requires, at a minimum, that the Commission seek adequate remedies, including penalty amounts sufficient to ensure that no benefit is attained through non-compliance. Recapturing the economic benefit gained by non-compliance alone is generally insufficient because it simply restores a violator to the place it would have been absent non-compliance. Therefore, higher penalties that exceed the economic benefit gained shall be imposed. This type of deterrence is particularly important to prevent violations which could result in safety impacts, public harm, or other severe consequences. In setting a penalty amount, the Commission shall consider a variety of factors relative to the nature of the violation, including the financial status of a company, to ensure that the penalty is sufficient to impact the decision making of a regulated entity.

D. Timely Enforcement

The Commission shall pursue timely enforcement. Enforcement is most effective when it quickly follows a non-compliant action.

E. Progressive Enforcement

The Commission shall implement progressive enforcement. Progressive enforcement is an important component of consistent and firm enforcement. Progressive enforcement provides an escalating series of actions beginning with informal actions such as a notification of violation and compliance assistance, followed by formal actions such as the issuance of an enforcement order or filing a civil or criminal action. Formal actions seek to compel compliance and will usually assess penalties or fines. Progressive enforcement may not be an appropriate enforcement response when violations result from intentional or grossly negligent misconduct, where the impacts on ratepayers are widespread, or where impacts to safety are significant.

F. Transparency

The Commission shall provide clear and consistent information about its enforcement actions and which entities it regulates. The Commission will monitor and report its formal and informal enforcement actions in a publicly accessible way, including the extent to which regulated entities return to compliance.

G. Environmental Justice and Disadvantaged Communities

The Commission shall promote enforcement of all statutes within its jurisdictions in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations in the state. This includes tailoring enforcement responses to address the needs of vulnerable and disadvantaged communities.

H. Adaptive Management

The Commission shall continuously monitor and update its enforcement program and authorities to ensure that they remain protective of customers and ratepayers. This includes keeping abreast of new markets, business practices, and consumer abuses that might

necessitate changes to the enforcement program and authorities.

I. Enforcement Prioritization

It is the policy of the Commission that every violation results in an appropriate enforcement action consistent with the priority of the violation. In recognition of its finite resources, the Commission shall exercise its enforcement discretion to prioritize enforcement actions. Enforcement prioritization enhances the Commission's ability to leverage its finite enforcement resources and to achieve the general deterrence needed to encourage the regulated community to anticipate, identify and correct violations.